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10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**

13 JEFFERY WERNER, an individual,
14 Plaintiff,
15 v.
16 TRIBUNE MEDIA COMPANY, a
17 Delaware corporation; AOL, INC., a
18 Delaware corporation; and DOES 1-10,
19 inclusive,
20 Defendants.

21 Case No.:

COMPLAINT FOR:

1. COPYRIGHT INFRINGEMENT
2. VICARIOUS AND/OR
CONTRIBUTORY COPYRIGHT
INFRINGEMENT
3. VIOLATIONS OF THE
DIGITAL MILLENNIUM
COPYRIGHT ACT
(17 U.S.C. §1202)

JURY TRIAL DEMANDED

1 Plaintiff, Jeffery Werner (“Werner”), by and through his undersigned
2 attorneys, hereby prays to this honorable Court for relief based on the following:

3 **JURISDICTION AND VENUE**

4 1. This action arises under the Copyright Act of 1976, Title 17 U.S.C., §
5 101 *et seq.*

6 2. This Court has federal question jurisdiction under 28 U.S.C. § 1331 and
7 1338 (a) and (b).

8 3. Venue in this judicial district is proper under 28 U.S.C. § 1391(c) and
9 1400(a) in that this is the judicial district in which a substantial part of the acts and
10 omissions giving rise to the claims occurred.

11 **PARTIES**

12 4. Werner is an individual residing in California.

13 5. Plaintiff is informed and believes and thereon alleges that Defendant
14 Tribune Media Company, individually and doing business as “eyeopenertv.com”
15 (collectively “Tribune”), is a corporation organized and existing under the laws of the
16 state of Delaware, and doing business in and with the state of California.

17 6. Plaintiff is informed and believes and thereon alleges that Defendant
18 AOL Inc. (“AOL”) is a corporation organized and existing under the laws of the state
19 of Delaware, and doing business in and with the state of California.

20 7. Defendants DOES 1 through 10, inclusive, are other parties not yet
21 identified who have infringed Plaintiff’s copyrights, have contributed to the
22 infringement of Plaintiff’s copyrights, or have engaged in one or more of the
23 wrongful practices alleged herein. The true names, whether corporate, individual or
24 otherwise, of Defendants 1 through 10, inclusive, are presently unknown to Plaintiff,
25 who therefore sues said Defendants by such fictitious names, and will seek leave to
26 amend this Complaint to show their true names and capacities when same have been
27 ascertained.

1 8. Plaintiff is informed and believes and thereon alleges that at all times
2 relevant hereto each of the Defendants was the agent, affiliate, officer, director,
3 manager, principal, alter-ego, and/or employee of the remaining Defendants and was
4 at all times acting within the scope of such agency, affiliation, alter-ego relationship
5 and/or employment; and actively participated in or subsequently ratified and adopted,
6 or both, each and all of the acts or conduct alleged, with full knowledge of all the
7 facts and circumstances, including, but not limited to, full knowledge of each and
8 every violation of Plaintiff's rights and the damages to Plaintiff proximately caused
9 thereby.

CLAIMS RELATED TO WERNER'S PHOTOGRAPHS

11 9. Werner owns photographs entitled "Amazon Eve: The World's Tallest
12 Professional Mode ("the "Subject Photographs"). Said photographs were published
13 and registered with the United States Copyright Office before the infringement at
14 issue.

15 10. Plaintiff's investigation revealed that Tribune and AOL published and
16 hosted video posts on their respective website(s) that incorporated unauthorized
17 copies of the Subject Photographs (the "Subject Posts").

18 11. True and correct representations of the Subject Photographs and the
19 corresponding photographs from the Subject Posts are attached hereto as Exhibit A.

20 12. Plaintiff is informed and believes and thereon alleges that copied images
21 of the Subject Photographs in the Subject Posts were altered to remove certain of
22 Werner's copyright management information.

23 13. Plaintiff is informed and believes that Defendants, and each of them,
24 posted, hosted, displayed and distributed the Subject Photograph without Werner's
25 permission.

FIRST CLAIM FOR RELIEF

(For Copyright Infringement – Against all Defendants, and Each)

1 14. Plaintiff repeats, re-alleges, and incorporates herein by reference as
2 though fully set forth, the allegations contained in the preceding paragraphs of this
3 Complaint.

4 15. Plaintiff is informed and believes and thereon alleges that Defendants,
5 and each of them, had access to the Subject Photographs, including, without
6 limitation, through (a) viewing the Subject Photographs on Plaintiff's YouTube
7 channels, (b) viewing Subject Photograph online, and (c) viewing Subject
8 Photographs through a third party. Plaintiff further alleges that the identical nature of
9 the copying establishes access.

10 16. Plaintiff is informed and believes and thereon alleges that Defendants,
11 and each of them, used and distributed images that were unauthorized copies of the
12 Subject Photographs, and exploited said images on at least one website post each.

13 17. Plaintiff is informed and believes and thereon alleges that Defendants,
14 and each of them, infringed Plaintiff's copyrights by creating infringing derivative
15 works from the Subject Photographs and by publishing and displaying the infringing
16 material to the public, including without limitation, through their websites.

17 18. Plaintiff is informed and believes and thereon alleges that Defendants,
18 and each of them, infringed Plaintiff's rights by copying the Subject Photographs
19 without Plaintiff's authorization or consent.

20 19. Due to Defendants', and each of their, acts of infringement, Plaintiff has
21 suffered general and special damages in an amount to be established at trial.

22 20. Due to Defendants' acts of copyright infringement as alleged herein,
23 Defendants, and each of them, have obtained direct and indirect profits they would
24 not otherwise have realized but for their infringement of Plaintiff's rights in the
25 Subject Photographs. As such, Plaintiff is entitled to disgorgement of Defendants'
26 profits directly and indirectly attributable to Defendants' infringement of Plaintiff's
27 rights in the Subject Photographs in an amount to be established at trial.

28

1 21. Plaintiff knows and believes and thereon alleges that Defendants,
2 and each of them, have committed acts of copyright infringement, as alleged above,
3 which were willful, intentional and malicious, which further subjects Defendants, and
4 each of them, to liability for statutory damages under Section 504(c)(2) of the
5 Copyright Act in the sum of up to one hundred fifty thousand dollars (\$150,000.00)
6 per infringement. Within the time permitted by law, Plaintiff will make his election
7 between actual damages and statutory damages.

SECOND CLAIM FOR RELIEF

9 (For Vicarious and/or Contributory Copyright Infringement – Against all
10 Defendants, and Each)

11 22. Plaintiff repeats, re-alleges, and incorporates herein by reference as
12 though fully set forth, the allegations contained in the preceding paragraphs of this
13 Complaint.

14 23. Plaintiff is informed and believes and thereon alleges that Defendants
15 knowingly induced, participated in, aided and abetted in and profited from the illegal
16 reproduction and distribution of the Subject Photographs as alleged hereinabove.

17 24. Plaintiff is informed and believes and thereon alleges that Defendants,
18 and each of them, are vicariously liable for the infringement alleged herein because
19 they had the right and ability to supervise the infringing conduct and because they
20 had a direct financial interest in the infringing conduct.

21 25. By reason of the Defendants', and each of their, acts of contributory and
22 vicarious infringement as alleged above, Plaintiff has suffered and will continue to
23 suffer substantial damages to their business in an amount to be established at trial, as
24 well as additional general and special damages in an amount to be established at trial.

25 26. Due to Defendants' acts of copyright infringement as alleged herein,
26 Defendants, and each of them, have obtained direct and indirect profits they would
27 not otherwise have realized but for their infringement of Plaintiff's rights in the

1 Subject Photographs. As such, Plaintiff is entitled to disgorgement of Defendants' 2 profits directly and indirectly attributable to Defendants' infringement of their rights 3 in the Subject Photographs, in an amount to be established at trial.

4 27. Plaintiff is informed and believes and thereon alleges that Defendants, 5 and each of them, have committed acts of copyright infringement, as alleged above, 6 which were willful, intentional and malicious, which further subjects Defendants, and 7 each of them, to liability for statutory damages under Section 504(c)(2) of the 8 Copyright Act in the sum of up to one hundred fifty thousand dollars (\$150,000.00) 9 per infringement. Within the time permitted by law, Plaintiff will make his election 10 between actual damages and statutory damages.

11 **THIRD CLAIM FOR RELIEF**

12 (For Violations of the Digital Millennium Copyright Act (17 U.S.C. §1202 –
13 Against all Defendants, and Each)

14 28. Plaintiff repeats, re-alleges, and incorporates herein by reference as
15 though fully set forth, the allegations contained in the preceding paragraphs of this
16 Complaint.

17 29. Plaintiff is informed and believes and thereon alleges that Defendants,
18 and each of them, violated 17 U.S.C. §1202 by providing false copyright
19 management information in connection with the works at issue, and distributing and
20 displaying the works at issue with false copyright management information.

21 30. Plaintiff is informed and believes and thereon alleges that Defendants,
22 and each of them, further violated 17 U.S.C. §1202 intentionally removing and/or
23 altering the copyright management information, in the form of metadata and text, on
24 or around the Subject Photographs, and distributing copyright management
25 information with knowledge that the copyright management information had been
26 removed or altered without authority of the copyright owner or the law, and
27 distributing and publicly displaying the material, knowing that copyright

1 management information had been removed or altered without authority of the
2 copyright owner or the law, and knowing, or, with respect to civil remedies under
3 section 1203, having reasonable grounds to know, that the conduct would induce,
4 enable, facilitate, or conceal an infringement of any right under this title.

5 31. The above conduct is in violation of the Digital Millennium Copyright
6 Act and exposes Defendants, and each of them, to additional and enhanced common
7 law and statutory damages, attorneys' fees, and penalties pursuant to 17 USC § 1203
8 and other applicable law.

9 32. Plaintiff is informed and believes and thereon alleges that Defendants,
10 and each of their, conduct as alleged herein was willful, reckless, and/or with
11 knowledge, and Plaintiff resultantly seeks enhanced damage and penalties.

PRAYER FOR RELIEF

Wherefore, Plaintiff prays for judgment as follows:

Against all Defendants, and Each:

With Respect to Each Claim for Relief:

- a. That Defendants, and each of them, as well as their employees, agents, or anyone acting in concert with them, be enjoined from infringing Plaintiff's copyrights in the Subject Photographs, including without limitation an order requiring Defendants, and each of them, to remove any content incorporating, in whole or in part, the Subject Photographs from any print, web, or other publication owned, operated, or controlled by any Defendant.
- b. That Plaintiff be awarded all profits of Defendants, and each of them, plus all losses of Plaintiff, plus any other monetary advantage gained by the Defendants, and each of them, through their infringement, the exact sum to be proven at the time of trial, and, to the extent available,

1 statutory damages as available under the 17 U.S.C. § 504, 17 U.S.C.
2 §1203, and other applicable law.

3 c. That a constructive trust be entered over any revenues or other proceeds
4 realized by Defendants, and each of them, through their infringement of
5 Plaintiff's intellectual property rights;

6 d. That Plaintiff be awarded his attorneys' fees as available under the
7 Copyright Act U.S.C. § 101 et seq.;

8 e. That Plaintiff be awarded their costs and fees under the above statutes;

9 f. That Plaintiff be awarded statutory and enhanced damages under the
10 statutes set forth above;

11 g. That Plaintiff be awarded pre-judgment interest as allowed by law;

12 h. That Plaintiff be awarded the costs of this action; and

13 i. That Plaintiff be awarded such further legal and equitable relief as the
14 Court deems proper.

15 Plaintiff demands a jury trial on all issues so triable pursuant to Fed. R. Civ. P.
16 38 and the 7th Amendment to the United States Constitution.

17 Respectfully submitted,

18
19 Dated: January 31, 2017

By: /s/ Scott Alan Burroughs
20 Scott Alan Burroughs, Esq.
21 Trevor W. Barrett, Esq.
22 Justin M. Gomes, Esq.
23 DONIGER / BURROUGHS
24 Attorneys for Plaintiff